

Policy Brief No. 1

Access to Justice for
Indonesian Women Migrant
Domestic Workers in the
United Arab Emirates

Migration, Gender and Social Justice: Connecting Research and Practice Networks



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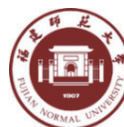
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Access to Justice for Indonesian Women Migrant Domestic Workers in the United Arab Emirates

Executive Summary

International labour migration has emerged as an important priority for Indonesia and the country has developed a robust policy and legal framework to regulate the export of migrant labour. Although women domestic workers represent a significant portion of this labour force, they are nonetheless not explicitly mentioned in current legislation. Based on an analysis of labour migration from Indonesia to the United Arab Emirates, this policy brief shows that this flaw has significant negative impacts for the protection and access to justice of migrant domestic workers. Various measures are suggested that could favour the legal empowerment of these migrant women throughout the different phases of the labour migration process.

Policy Brief No. 1: Access to Justice for Indonesian Women Migrant Domestic Workers in the United Arab Emirates

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research: 'Akses Keadilan dan Migrasi Global: Kisah Perempuan
Indonesia Pekerja Domestik di Uni Emirat Arab', Jakarta:
Yayasan Obor Indonesia, 2011. An English version is accessible
through IDRC: 'Access to Justice in Global Migration: Indonesian
Women Migrant Domestic Workers in the United Arab Emirates'.

Introduction

In recent decades, international labour migration has become a major concern for Indonesia: over 2% of the 240 million people making up the country's total population are deployed to various Middle-Eastern and Asian countries, including the United Arab Emirates (UAE), through participation in state-sponsored programmes. Women domestic workers currently account for 75-80% of the total flow. International labour migration generates substantial remittance flows for Indonesia, with transfers through official channels alone accounting for over USD 6 billion annually. Nonetheless, state duty to protect the rights of migrant workers generally, and migrant domestic workers specifically, is far from adequate. Domestic work remains undefined in the Labour Law of Indonesia as well as of some receiving countries, exposing women to exploitation and abuse in different phases of labour migration schemes.

This policy brief is based on research undertaken in Indonesia and the UAE with the aim of analysing current labour regulations and observing the impacts on access to justice among migrant domestic workers. Specifically, the research included: legal analysis on the use in legislation of categories such as domestic work,

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women and labour migration; research in the pre-departure phase in Indonesia on the recruitment of labour for overseas jobs; research in the UAE as a destination country among women receiving assistance in shelters set up by the Indonesian Embassy and Consulate in Abu Dhabi and Dubai, respectively. Research at these three levels shows that the ways in which legal identity is defined has strong implications for those women domestic workers who become victims of abuse and exploitation.

Research findings

The Law on the Placement and Protection of Indonesian Manpower Abroad (No. 39, 2004) delegates workers' protection entirely to the recruiting agencies. Entry into this business, moreover, is filtered on the basis of criteria that emphasize financial factors rather than knowledge about labour migration as carrying major implications for the protection of workers. The

Law also excludes the category of 'domestic work' and 'women' as a social group, which has enabled a remarkable ease of entry into the unlicensed business of recruitment and supporting services, and the diffusion of unethical practices towards women migrant applicants. Agencies involved in recruitment and placement work in their business interests only and neglect the protection of the rights of overseas workers. This is evident in Condet, a district east of the capital Jakarta that has become a 'One Stop Trading Centre' in the migration business where many recruiting agencies

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have established themselves. The responsibilities granted to such agencies by the Law and further regulations on labour export programmes result in various risks of human rights abuse. Women applicants who depend on pre-departure services to obtain government clearance before they can acquire a passport to access overseas employment occupy the weakest position. Low monitoring and lack of transparency around medical examination, the terms of contract, recruitment fees and methods of repayment, as well as ineffective rules on grievance processes give room for unethical practices at the expense of the migrant workers.

Difficulties for migrant workers might continue after the pre-departure phase in the country of destination.

This is the case in the UAE, where the government has been criticized for its neglect of migrant worker protection and for having failed to establish a transparent, well-documented, accessible system for the resolution of disputes. Women domestic workers in the UAE face additional problems due to the exclusion of their status from national labour law, which obliges them to rely on the immigration office in case of labour disputes. The failure of Indonesian and UAE law to address domestic work largely validates domestic work as something 'marginal'.

Domestic workers are subject to the common practice of 'sponsorship', which ties the worker to the employer and the labour placement agency as main parties of the employment contract. These two actors have effective control over the foreign worker (including holding her passport as a legal document). Domestic workers are also often bound to the home as their work place, a fact

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that further enhances their invisibility and restricts their freedom of movement and choice.

Contracts are mostly written in English and Arabic (rather than Indonesian) and although migrants may sign a contract before departure, they might not understand the contents. Those who do are unaware that they may be obliged to sign another contract in the UAE. Discrepancies between the two contracts are reported specifically with regard to the monthly salary indicated, which ends up falling significantly below the official minimum wage in UAE. This system of multiple contracts that lacks accountability and transparent conditions represents a major issue for women migrant domestic workers who typically have low levels of education.

Women who run away from their employers or recruiting agencies and seek refuge in the shelters set up by Indonesian diplomatic missions overseas offer insight into the kinds of abuse and exploitation of which domestic workers may become victims. These include:

'Many women domestic migrants lack basic understanding about their legal status and rights, including the official migration procedures in Indonesia and legal protection they may be entitled to from authorities in the UAE.'

unpaid or underpaid salary and salary deduction; lack of decent food; restrictions in freedom of communication; physical, psychological, and sexual abuse; forced confinement and being charged with crime (having a boyfriend, kidnapping, burning the house, child mistreatment). Many women domestic migrants lack basic understanding about their legal status and rights, including the official migration procedures in Indonesia and legal protection they may be entitled to from authorities in the UAE. For instance, women workers are often unaware that when they run away this will cause their residence permit to expire. They do not value the importance of their passport as a legal document that could enable them to return to Indonesia, and consider the withholding of passports by employers or recruiting agencies as a 'normal' practice. Although the law obliges migrant workers to pay an insurance fee that should cover legal fees should migrant workers face problems in the destination country, women workers are largely unaware of this entitlement.

Women migrant domestic workers are also exposed to the risk of physical abuse and rape. When rape results in pregnancy, moreover, abortion is illegal. In cases of abuse and rape, processing an insurance claim remains remote for the victims, who are obliged to fulfil almost impossible conditions, including producing a report from a medical doctor, a letter from local police, specific medication and treatment from the hospital, and/or a letter from the representative of Indonesia in the host country. Moreover, facilitating dispute settle-

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ment as a form of legal aid requires relying on local lawyers to handle cases in the UAE, due to different legal jurisdictions. The involvement of Indonesian government representatives is limited to escorting the victim to report the case to the police office.

Conclusion

Access to justice is a fundamental shield for women domestic workers in global migration. The case of Indonesian women domestic workers demonstrates the need to enhance their legal empowerment in order to reduce the risks of human rights violations. The gross abuse of migrant domestic workers overseas calls for legal texts that better reflect their concrete experiences. In Indonesia, the majority of those participating in state-sponsored labour migration programmes are women originating from poor communities who engage in overseas domestic work. Despite their significance, women migrant domestic workers who are victims of exploitation and abuse nonetheless have limited or no access to justice at the different stages of their migration. Various factors contribute to this situation: the exclusion of women migrant domestic workers from the

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substance of the law in sending and receiving countries; poor legal understanding on behalf of the women migrants themselves; the relative ease with which existing rules can go unobserved; and ineffective legal aid.

Implications and recommendations

International labour migration is a key priority for the government of Indonesia and a legal framework has been enacted that regulates the exportation of its labour force. Current legislation, however, falls short of suitably addressing the most significant category in the Indonesian international migrant labour force: women

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domestic workers. Protection of these migrants' rights should be enhanced throughout all phases of labour migration schemes: pre-departure, work placement and—should these arise—settlement of labour disputes. To this aim, the following recommendations are made to the Indonesian government:

- *Empower women by providing enhanced knowledge and information in the pre-departure phase that better responds to the genuine needs of migrant domestic workers.*

In many cases women lack the necessary legal knowledge that would allow them to make well-informed decisions when joining overseas employment programmes. The following improvements are necessary in pre-departure training and preparation:

Firstly, training should provide domestic workers with understanding of their basic rights—including the right to work, the right to be protected during employment, the right to receive healthcare and legal services during employment, and the right to claim the insurance in case of need—and how such rights are protected by Indonesian law.

Secondly, Training should also provide legal knowledge about laws and regulations that are relevant for women domestic workers in the destination country. Notable examples in the case of the UAE are criminal charges for having a relationship with man, running away from the employer's house, abortion and theft. In addition, migrants should be provided also with general knowledge about the culture, habits and customs of people in the destination country.

Thirdly, in order to implement a training and preparation curriculum that is improved along the aforementioned lines, the government should either have the means to enforce stringent supervision and monitoring over the recruiting agencies, or it should take over these tasks

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from them. The conduct of training on legal knowledge is in fact ultimately the responsibility of the government, because it concerns the rights of migrant workers as citizens of Indonesia. Entrusting this task to recruiting agencies involves a conflict of interests, i.e., 'producing' obedient subjects to fulfil the employment contract smoothly versus imparting the legal knowledge about the citizenship rights of migrant workers.

- *Ensure respect of existing laws and regulations during the recruitment and work placement phase.*

In addition to urging the Indonesian government to sign and ratify the ILO Convention Concerning Decent Work for Domestic Workers and to work towards a bilateral treaty with the UAE, there is a need to ensure the following:

Firstly, in the work placement phase existing laws and regulations must be respected, and—where lacking—regulations need to be introduced that defend the dignity, rights and security of the person for women domestic workers. In particular, the government should closely monitor the action of recruitment and job placement agencies to ensure that pre-defined standards are applied to wages, health insurance and work safety,

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and that such standards are concretely respected when contracts are implemented overseas.

Secondly, in the selection of women migrant workers, additional measures should be introduced to ensure that middle-aged women whose education is lower than high school get additional legal training before accessing labour migration. Against the current practice of making only a profile of the worker available to prospective employers, moreover, it could be imposed on agencies to provide information about the future employer also to the domestic worker.

Thirdly, the improvements and measures just suggested would be hugely facilitated through assertive relations with recruitment and placement agencies in Indonesia and, through overseas diplomatic missions (Indonesian embassies and consulates), in the receiving country. This would facilitate the cooperation of

recruitment and job placement agencies in the formulation and signing of bilateral agreements to prevent exploitation and human trafficking syndicates, and to avoid purely business-oriented relations that treat Indonesian workers as a commodity rather than with respect for their human dignity.

- *Explore mechanisms that can improve the reach of current possible actions for the settlement of labour disputes.*

Advancements in pre-departure and job placement practices will not fully prevent exploitation and abuse from occurring during overseas employment. Additional efforts are needed to improve the reach of labour dispute settlement measures and legal support available to migrants in need.

Firstly, there is a need to ensure political breakthrough to overcome the unequal relation between sending and destination countries, and gain greater flexibility in providing protection for women domestic workers. The Indonesian government should encourage the active engagement of its diplomatic representations (embassies and consulates) in the country of destination and

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support them to acquire more leverage in solving the problems faced by domestic migrant workers. Specifically, efforts should be made to lift current limitations in the reach of protection measures that cannot be enforced when the worker is inside the employer's house.

Lastly, relevant staff employed in overseas diplomatic missions in countries of destination (e.g. in the Labour Section) should also have a good understanding of issues related to migration and domestic migrant workers. Their knowledge could be improved through cooperation with universities (in particular faculties of law), professional lawyers and aid organizations active in protecting migrant rights in Indonesia and in countries of destination. Cooperation and exchange between these actors would allow to lobby more effectively for the establishment of an institution or a forum in countries of destination that deal specifically with the settlement of disputes involving foreign workers, particularly domestic workers.

